

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

**ALEJANDRO GONZALES, JR.,**  
**Plaintiff,**  
  
**v.**  
  
**DONNA INDEPENDENT SCHOOL**  
**DISTRICT**  
**Defendant.**

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**Case No.** \_\_\_\_\_

**NOTICE OF REMOVAL**

Defendant Donna Independent School District (hereinafter referred to as “Donna ISD”) hereby removes Cause Number C-3999-19-L from the 464th Judicial District Court, Hidalgo County, Texas, to the United States District Court for the Southern District of Texas, McAllen, Division, under 28 U.S.C. §§ 1331, 1367, 1441, and 1446 for the reasons explained below.

**I. STATEMENT OF THE CASE**

1. On September 12, 2019, plaintiff commenced a lawsuit in the 464th Judicial District Court, Hidalgo County, Texas, styled *Alejandro Gonzales, Jr., v. Donna Independent School District* (the “State Court Action”).

2. Defendant Donna ISD was served with citation and a copy of the Plaintiff’s Original Petition on September 18, 2019.

3. The petition purports to assert several causes of action including: (a) a violation of the Texas Commission of Human Rights Act (“TCHRA”) based on plaintiff being terminated because of his age; (b) a violation of the Family Medical Leave Act (“FMLA”) because plaintiff was terminated while on leave; (c) a civil conspiracy, and (d) political retaliation in violation of Plaintiff’s First Amendment right.

4. The plaintiff seeks on behalf of himself: (a) Compensatory damages in an unspecified amount; (b) damages for mental anguish in an unspecified amount; (c) exemplary damages; (d) reasonable attorney's fees; (e) any other general or specific relief, both in equity and at law that he may justly show himself entitled to.

5. Defendant deny each and every one of the allegations asserted by Plaintiff

## **II. PROCEDURAL REQUIREMENTS**

6. With this Notice of Removal, Defendants remove the State Court Action to this court on the basis of federal question as fully described below.

7. Venue in the Southern District of Texas, McAllen Division is proper under 28 U.S.C. § 1441(a), because this Court is the United States District Court for the district and division embracing the place where the State Court Action is Pending.

8. This removal is timely. As stated above, Defendants have been served with citation and the petition—the state court equivalent to the summons and complaint. Accordingly, this removal is timely under 28 U.S.C. § 1446(b) because defendants file this notice of removal less than thirty days after the receipt by the defendant of a copy of the initial pleading setting for the claim for relief.

9. Pursuant to 28 U.S.C § 1446(a), a true and correct copy of all of the process, pleadings, orders, and documents from the State Court Action which have been served upon Defendant are being filed with this Notice of Removal which include:

- a. Exhibit A: An index of matters being filed;
- b. Exhibit B: List of Counsel;
- c. Exhibit C: Plaintiffs Original Petition;
- d. Exhibit D: Citations/Returns of Service;

- e. Exhibit E: State District Court Docket Sheet; and
- f. Exhibit F: Civil Cover Sheet.

10. Simultaneously with the filing of this Notice of Removal, Defendant is Filing a copy of the Notice of removal in the 464th Judicial District Court of Hidalgo County, Texas. 28 U.S.C. 1446(d).

### **III. BASIS OF REMOVAL: FEDERAL QUESTION**

11. The State Court Action is removable under federal question jurisdiction. A case may be removed to federal district court where such a court has jurisdiction. 28 U.S.C. § 1441. Federal district courts have original jurisdiction over “all civil actions arising under the...laws...of the United States.” 28 U.S.C. § 1331. A claim “arises under” federal law when either (1) the well pleaded complaint establishes that federal law creates the cause of action; or (2) the Plaintiff’s right to relief necessarily depends on the resolution of a substantial question of law. *See Singh v. Morris*, 538 F.3d 334, 338 (5th Cir. 2008). Further, the Fifth Circuit Court of Appeals has stated that “[t]he assertion of a claim under a federal statute alone is sufficient to empower the district Court to assume jurisdiction over the case and determine whether, in fact, the Act does provide the claimed rights.” *Holland/Blue Streak v. Barthelemy*, 849 F.2d 987, 988 (5th Cir. 1988). Removal is proper in this instance under 28 U.S.C. §§ 1331 and 1441 because plaintiff’s Petition arises under the laws of the United States. Specifically, Plaintiff alleges that Donna ISD violated the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C §§ 2601, *et seq.*, a federal statute and his first amendment right to political association under 42 U.S.C § 1983.

12. The Court has supplemental jurisdiction over Plaintiff’s state-law claims because there is a “common nucleus of operative fact” between Plaintiff’s federal and Texas state law claims as set forth in Plaintiff’s Original Petition, in that the claims in this matter are based on

alleged wrongful conduct relating to the termination of the Plaintiff from his position with Donna ISD and, therefore, this court's supplemental jurisdiction extends to Plaintiff's Texas state law claims pursuant to 28 U.S.C. § 1367(a).

#### **IV. JURY DEMAND**

13. Plaintiff has demanded a jury trial in this case in accordance with the Texas Rules of Civil Procedure in the State Court Action.

#### **V. CONCLUSION**

14. For these reasons, Defendant Donna ISD removes this action from the 464th Judicial District Court of Hidalgo County, Texas to the United States District Court for the Southern District of Texas, McAllen, Division, so that this Court may assume jurisdiction over this case as provided by law.

Respectfully Submitted,

**FLORES & TORRES, LLP**

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**Attorneys for Donna ISD**

**CERTIFICATE OF SERVICE**

I hereby certify that I submitted the forgoing to the clerk of the United States District Court, Southern District of Texas using the electronic case filing system of the Court, and that I served all counsel of record listed below in accordance with Federal Rule of Civil Procedure 5(b)(2) on October 15, 2019.

**Via Electronic Service**

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By: /s/ David L. Flores  
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